

REMARKS

By the present amendment, Applicant has canceled original Claims 1-8 and added Claims 9 through 14, which remain pending in the present application for further consideration. Claim 9 is the sole independent claim.

In the recent Office Action, the Examiner more particularly set forth the election requirement that was generally communicated in the telephone conversation on November 8, 2006. Pursuant to the telephonic requirement, Applicant provisionally elected with traverse to prosecute the invention defined by Claims 1-4 (directed to the generally circular termite deterrent and protective cap). This is to confirm Applicant's election. Newly presented Claims 9-11, 13 and 14 are considered to be readable on the elected species. New dependent Claim 12 is directed to the non-elected species. Applicant requests that this claim be rejoined with the elected invention in light of the proposed allowability of generic Claim 9 for the reasons delineated herein.

In the recent Office Action, the Examiner also objected to the drawings; rejected Claim 4 under 35 U.S.C. § 112, second paragraph, as being indefinite; and objected to Claim 1. Further, the Examiner separately rejected Claims 1-4 under 35 U.S.C. § 103(a) as being unpatentable over Wannamaker (US-1,637,627) in view of White (US-4,229,916), or further in view of Rasmussen et al. (US-5,934,035) or Watts (US-4,161,090).

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The Examiner objected to the drawings as failing to show features specified in the claims. In this regard, Applicant has canceled Claims 2 and 3 which renders this ground of objection moot with respect to these claims. Also, Claim 10 sets forth that the periphery and the sidewalls of cap in question come together to form a “chamfered outer edge” which is clearly shown in the drawings. Applicant respectfully submits that drawings are in compliance with 37 CFR 1.83(a) since all of the features set forth by the newly presented claims are shown in the original drawings.

Applicant respectfully submits that the newly presented claims are devoid of the criticisms noted of record by the Examiner. Specifically, the term “smooth” does not appear in the claims presently in the case, and the preamble of the new claims clearly state that claimed invention is directed to the “combination” of the cap and pier structure.

The cancellation of original Claims 1-8 the introduction of new Claims 9-14 by the present amendment should serve to obviate the prior art grounds of rejection of record. Applicant will advance arguments herein below to illustrate the manner in which the invention defined by the newly introduced claims is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

Independent Claim 9 has been introduced to more particularly define the subject matter in question. This newly presented independent claim sets forth a termite deterrent cap in combination with a pier structure. The pier structure is defined as a cement pier having a top end with exterior walls, wherein the pier includes a rod having a lower section centrally embedded in the pier and an upper threaded section extending beyond the top end of the pier, which is adapted for connection to a supported timber structure. The cap is defined as a plastic cap having a topside with a center aperture, a periphery and sidewalls having an inside surface and extending downward at an outward angle from the periphery of the cap. The cap is further defined as being configured and dimensioned to cover the top end of the pier with the rod extending through the center aperture, such that the inside surface of the sidewalls does not contact with the exterior walls of the pier. As discussed above, new dependent Claim 10 further characterizes the beveled outer edge of the cap. Claims 11 and 12 set forth configurations of the cap and pier. New dependent Claim 13 states that the cap is made of polyethylene, and Claim 14 recites the specific height dimension of the cap sidewalls. No new matter is involved by the language set forth by the newly presented claims since the same find clear support in the drawings and written description of the original disclosure.

Applicant contends that the Wannamaker reference taken in combination with White, or with any of the ancillary references of record, fails to describe or reasonably suggest a termite deterrent cap/pier structure having the combination of structural and functional features as defined by the present claims.

The primary reference to Wannamaker discloses a outer casing for protecting the heads of wooden piles from moisture. While Wannamaker's pile protector and Applicant's cap share a similar overall configuration, the similarities end there. The reference casing is made metal, whereas Applicant's cap is fabricated of plastic. Wannamaker's pile protector to secured in place by a drift pin driven through the supported structure and protector and into the wooden pile. In contrast, Applicant employs a threaded rod, preferably a J-bolt, embedded in the cement pier to secure the cap in place. Downward pressure on the supported wood structure by tightening the J-bolt nut provides a tight seal between the top of the concrete pier and the inside top surface of the plastic cap, thereby eliminating entrance of pests to the wood structure above. Clearly, Wannamaker's wooden pile head protector is structurally and functionally unrelated to Applicant's cement pier/plastic cap combination as defined by the present claims.

Applicant contends that the patent to Wannamaker fails to disclose the essential features of Applicant's structural combination that form the basis of the present claims. Further, it is Applicant's contention that the reference to Wannamaker, taken in combination with White, Rasmussen and/or Watts, is insufficient to render the presently claimed invention obvious within the meaning of 35 U.S.C. 103 since these ancillary references fails to supplement the above-noted deficiencies of the primary reference to Wannamaker.

The Examiner relies upon the patent to White to show that a plastic building panel having a scored circular center is known in the art. The patent to Rasmussen et al. was relied upon for its teaching of the advantageous application of caulking. The Watts patent was cited to show a cap made of polyethylene. Notwithstanding, White's building panel is for use in conjunction with manufactured siding and Rasmussen et al. applies caulking between precast brick layers. Applicant contends that the teachings of these ancillary references are so unrelated to the pile head protector taught by Wannamaker that any assumption that one of ordinary skill in the art would likely be motivated to combine these references in the manner suggested by the Examiner is completely unfounded. In any event, the combinations of references relied upon of record fail to realistically suggests Applicant's termite deterrent cap/pier structure or addresses the nature of the problem to be solved by the claimed invention.

Applicant first contends that one skilled in the art would not be motivated or guided by the prior art to combine these references in the manner suggested by the Examiner. Moreover, Applicant further contends that even if the references were properly combinable, the above noted deficiencies of the primary reference to Wannamaker are not remedied by the realistic teachings afforded by the secondary references. Thus, one of ordinary skill in the art without the benefit of Applicant's own disclosure would not be capable of arriving at the presently claimed invention by combining the references in the manner suggested by the Examiner since none of references cited or applied of record

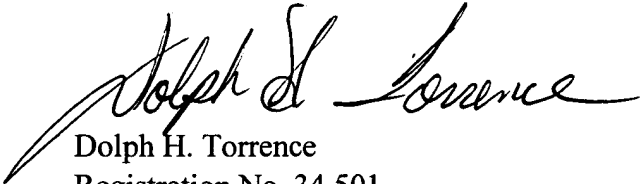
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realistically suggests the essential combination of structural features that forms the basis of the instant claims. For at least these reasons, Applicant respectfully submits that newly presented independent Claim 9 and corresponding new dependent Claims 10-14 are allowable over the prior art of record.

For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,



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